

**MINUTES OF
FAUQUIER COUNTY BOARD OF ZONING APPEALS
March 4, 2004**

The Fauquier County Board of Zoning Appeals held its regularly scheduled meeting on Thursday, March 4, 2004, beginning at 2:00 P.M. at the Town of Warrenton Police Department, 333 Carriage House Lane, Warrenton, Virginia. Members present were Mrs. Margaret Mailler, Chairperson; Mr. John Meadows, Vice-Chairperson; Ms. Sonja Addison, Secretary; Mr. James W. Van Luven; Mr. Maximilian Tufts, Jr.; Mr. Mark Rohrbaugh; and Ms. Carolyn Bowen. Also present were Ms. Tracy Gallehr, Assistant County Attorney; Ms. Kimberley Johnson, Zoning Administrator; Mr. Fred Hodge, Assistant Zoning Administrator; and Mrs. Debbie Dotson, Office Associate III.

NEW MEMBER: Chairman Mailler introduced the new member, Carolyn Bowen.

Ms. Bowen stated that she was glad to have been appointed to the BZA and looked forward to serving. She stated that she would abstain from voting on items #2, #4, and #5 in that she was not on the BZA or had made a decision on the case while she served as the Fauquier County Zoning Administrator.

MINUTES: On a motion made by Mr. Rohrbaugh and seconded by Mr. Van Luven, the Board of Zoning Appeals voted to make the following corrections to the February 5, 2004 minutes:

- on page 1, change January 8, 2004 to read "February 5, 2004".

The motion carried unanimously.

On a motion made by Mr. Rohrbaugh and seconded by Mr. Van Luven, the Board of Zoning Appeals voted to approve the corrected minutes of the February 5, 2004 meeting.

The motion carried unanimously.

LETTERS OF NOTIFICATIONS AND PUBLIC NOTICE: Mr. Hodge stated that to the best of his knowledge, the cases before the Board of Zoning Appeals for a public hearing had been properly advertised, posted, and letters of notification sent to adjoining property owners. Mrs. Dotson read the Public Hearing Protocol.

**VARIANCE #ZNVA04-CR-004, WILLIAM R. AND TONIA SMITH, III
(OWNERS)**

Owners are seeking a 15' variance to the front yard setback requirement of 75' and a 10' variance to the floodplain setback requirement of 25' for a single family dwelling, PIN #7924-39-5962, located on Payne Lane, Cedar Run District, Nokesville, Virginia.

Mr. Hodge stated that the BZA made a site visit last month and kept the public hearing open. He reviewed the staff report, a copy of which is attached to and made a part of the minutes.

Mr. and Mrs. Smith, owners, appeared representing the application and noted agreement with the staff report.

Ms. Mailler asked if there were any speakers for or against the application. There being no speakers, the public hearing was closed.

On a motion made by Mr. Van Luven and seconded by Mr. Tufts, the BZA noted that due notice and hearing as required by the Code of Virginia Section 15.2-2204 and Fauquier County Code Section 5-009 had been provided, and voted to grant the variance with the following findings:

1. The strict application of the Ordinance would produce undue hardship because much of the lot lies within the boundary of a 100-year floodplain, and the shape of the lot leaves a narrow strip of land between the floodplain and the private right of way serving the property;
2. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity and is not of so general or recurring a nature as to make reasonably practical the formation of a general regulation to be adopted as an amendment to the Ordinance;
3. That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance; and
4. The minimum variance that is necessary to afford relief is a 15-foot reduction from the 75' front yard setback requirement along Payne Lane and a 10-foot reduction from the 25-foot setback requirement for a residential structure from the boundary of a 100-year floodplain.

AYES: Mrs. Mailler, Mr. Meadows, Mr. Van Luven, Ms. Addison, Mr. Rohrbaugh, Mr. Tufts

NAYS: None

ABSTAINED: Ms. Bowen

ABSENT: None

The motion carried.

SPECIAL PERMIT #SPPT04-MA-018, MARIE HORNG (OWNER) / BRITT C. & DOROTHEA T. COLVIN (APPLICANTS)

Applicants are seeking special permit approval to locate a bed and breakfast on the property with an identification sign up to twelve (12) square feet, PIN #6975-81-9887, located at 7296 Fenton Farm Lane, Marshall District, Warrenton, Virginia.

Mr. Hodge stated that the Zoning Office received a letter from Mrs. Colvin requesting that the application be withdrawn.

On a motion made by Ms. Addison and seconded by Mr. Rohrbaugh, the application was dismissed.

VARIANCE #ZNVA04-MA-005, FAUQUIER HERITAGE & PRESERVATION FOUNDATION, INC. (OWNERS)

Owners are seeking a 26' variance to the front yard requirement (Town Centre Drive) on the southwestern portion of the property, PIN #6969-68-7960, located on Rt. 17, Marshall District, Marshall, Virginia.

Mr. Hodge stated that the BZA made a site visit last month and kept the public hearing open. He reviewed the staff report, a copy of which is attached to and made a part of the minutes.

Mr. Dink Godfrey, member of the Fauquier Heritage & Preservation Foundation, appeared representing the application and noted agreement with the staff report.

Ms. Mailler asked if there were any speakers for or against the application.

Mr. Tom O'Brian, representative of D & T Associates, stated concern with the variance encroaching on their right of way.

Ms. Johnson stated that the building, at its closest point, will be 4' from the right of way, and if a variance is approved, the building will not encroach on the 50' right of way.

Ms. Mailler asked if there were any other speakers. In that there were no more speakers, the public hearing was closed.

On a motion made by Mr. Meadows and seconded by Mr. Tufts, the BZA noted that due notice and hearing as required by the Code of Virginia Section 15.2-2204 and Fauquier County Code Section 5-009 had been provided, and voted to grant the variance with the following findings:

1. The strict application of the Ordinance would produce undue hardship because the small size of the parcel, the two front yards for the parcel, and the presence of two other easements on the property combine to significantly constrain the buildable area of the site;

2. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity and is not of so general or recurring a nature as to make reasonably practical the formation of a general regulation to be adopted as an amendment to the Ordinance;
3. That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance; and
4. The minimum variance that is necessary to afford relief is a 26 foot reduction from the 55' front yard setback requirement along the southwestern edge of the property (adjacent to the platted Town Centre Drive).

AYES: Mrs. Mailler, Mr. Meadows, Mr. Van Luven, Ms. Addison, Mr. Rohrbaugh, Mr. Tufts

NAYS: None

ABSTAINED: Ms. Bowen

ABSENT: None

The motion carried.

APPEAL #ZNAP04-MA-003, RAY PENNINGTON, III (OWNER)

Applicant is appealing the Zoning Administrator's decision that a Mountain View Estates lot is not a buildable lot, PIN #6958-38-7138, located in the Marshall District, Warrenton, Virginia.

Mr. Hodge stated that this appeal is a public meeting not a public hearing.

Ms. Johnson stated that the applicant was appealing the decision of the Zoning Administrator, in October 2003, to deny a zoning permit to build a single family home on the subject property. The denial was based on her determination that the lot was not a buildable lot. Ms. Johnson noted that there are two ways that this lot could be buildable. One, if the lot predates zoning and subdivision regulations, it would be a buildable lot. Ms. Johnson noted that this is not the argument being made in this case; rather, the appellant argues that the lot was created in 1977 with the recordation of a plat in the land records. For the lot to have been created in this time period, it would have had to been created under the subdivision regulations and comply with the zoning regulations in place at the time of creation. The research of this parcel shows that the lot was part of a larger lot that was subdivided to create part of the Mountain View Estates subdivision in 1973. However, this portion of the lot was not shown in the recorded subdivision, a surveying error that left a remnant piece of land. The remnant was recorded in 1977 for the sole purpose of transferring ownership. The plat that was recorded was not a subdivision plat. Fifteen years ago, this precise issue was raised when application was made to build a

single family home on the lot. At that time, a zoning permit was issued, and then rescinded, by Carolyn Bowen who was then Zoning Administrator. Ms. Bowen found that the lot was not a buildable lot for the same reasons presented here today. Mr. Pennington's application argues that the plat that was recorded in 1977 was a subdivision plat creating the lot. The 1977 plat was not a subdivision plat. In any case, the subject lot could not have been created in 1977 by subdivision because it did not meet the Zoning regulations in place at the time, which required a minimum of 10 acres for a lot.

Mr. Raymond Pennington, III, applicant, appeared representing the appeal. He stated that the lot was created in 1908 and was known as the Elvira Gaines property. He stated that he followed the chain of title through to the current parcel. Mr. Pennington stated that the 1977 plat for the property, stamped by Mr. McNear, indicates that this transfer does not come under any zoning. Mr. Pennington maintained that therefore the parcel was an existing parcel. He stated that the County is in error. He presented a copy of a recorded plat for Mountain View Estates showing the 2 acre Elvira Gaines property, and indicated that in 1977 Mr. McNear located the Gaines tract with the surveyor's help on the opposite end of the subdivision. Mr. Pennington stated that this lot has been taxed since 1908, and that he has always been taxed \$50,000 for the property as a building lot. He stated that the all setback requirements can be met on the lot and that it has a drainfield for 4 bedrooms. He stated that there are two ways this lot could have been approved without coming under the Subdivision Ordinance. As, Ms. Johnson stated, one way is if it is a lot pre-existing the zoning ordinance. The other way is if property is split by a state road. He noted that State Route 720 came around the property at that time. Mr. Pennington also noted that a wood lot was a common type of division in the past, and that the County had approved many such wood lot divisions. Mr. Pennington reiterated that that his position is that this lot is the Gaines lot which has existed since 1908. Mr. Pennington introduced Mr. Tisinger, his attorney, to address any issues.

Mr. T. Joseph Tisinger, attorney for the applicant, appeared representing the application. He stated that Ms. Johnson did provide them with a copy of the staff report. He stated they would dispute Paragraph 1 that asserts that this lot was part of the Mountain View Estates. He introduced into record the plat of Mountain View Estates. He stated that the 1977 plat that was put to record identified the parcel simply as a pre-existing lot. Mr. Tisinger indicated that Mr. Pennington has researched the chain of title and found that at some point there was an "except clause" that identified a 2+ acre parcel belonging to Elvira Gaines. Because the location of that parcel was not readily identifiable, the surveyor simply put the lot outside of the subdivision, which is the property which Mr. Pennington owns. Mr. Tisinger stated that he would like to put in the record Item #1 – Mountain View Estates Plat, Item #2 – Deed, Item #3 – Tax Map, and Item #4 – Tax Map. He stated that because a decision was previously made on this issue in 1987 it does not necessarily mean it was the right one.

Mr. Tufts asked Mr. Pennington if he has a clear title report. Mr. Pennington stated that he does but not with him. Mr. Tisinger stated they could put one together and provide it to the Board for review.

Mr. Meadows stated that the items introduced into record would need to be verified for authenticity.

Mr. Tisinger asked for the Board to postpone their decision until the next meeting.

Ms. Johnson stated that she would be happy to meet with Mr. Pennington and Mr. Tisinger and review any additional information they'd like to provide.

On a motion made by Mr. Meadows and seconded by Mr. Van Luven, the Board moved to defer the case until the next meeting.

AYES: Mrs. Mailler, Mr. Meadows, Mr. Van Luven, Ms. Addison, Mr. Rohrbaugh, Mr. Tufts

NAYS: None

ABSTAINED: Ms. Bowen

ABSENT: None

The motion carried.

SPECIAL PERMIT #SPPT04-MA-020, AARON D. & MARY ELLEN DEAN (OWNERS) / ANGELA COONEY (APPLICANT)

Applicant is seeking special permit approval to locate a massage therapy business on the property pursuant to Section 3-313.9 of the Fauquier County Zoning Ordinance, PIN #6060-63-0971, located at 3920 Rectortown Road, Scott District, Marshall, Virginia.

Mr. Hodge stated that a BZA site visit was made earlier today, and he reviewed the staff report, a copy of which is attached to and made a part of the minutes.

Ms. Angela Cooney, applicant, appeared representing the application and noted agreement with the staff report.

Mr. Rohrbaugh asked if Ms. Cooney was moving out of an existing commercial area to this area and asked if she would be living in the house. Ms. Cooney stated yes she was moving her existing business from Marshall, but that she had no plans to live in the house at this time.

Ms. Mailler asked if there were any speakers for or against the application.

Ms. Bowen stated that since a site plan is not required by the Zoning Ordinance, the drawing submitted with this application should clearly identify the required parking area. She also noted that Ms. Cooney had not requested a sign. She further stated that she felt 30 minutes between appointments would be better than 15 minutes.

There was general discussion about verifying the parking. Ms. Johnson noted that staff could visit the site and assure that the required parking and turn-around had been installed.

Ms. Mailler stated that VDOT did comment on the application and that an updated entrance would be required.

On a motion made by Mr. Tufts and seconded by Mr. Meadows, the BZA noted that due notice and hearing as required by the Code of Virginia Section 15.2-2204 and Fauquier County Code Section 5-009 had been provided, and voted to grant the special permit with the following findings:

1. The proposed use will not adversely affect the use or development of neighboring properties and will not impair the value of nearby land.
2. The proposed use is in accordance with the applicable zoning district regulations and applicable provisions of the Comprehensive Plan.
3. Pedestrian and vehicular traffic generated by the proposed use will not be hazardous or conflict with existing patterns in the neighborhood.
4. Adequate utility, drainage, parking loading and other facilities are provided to serve the proposed use.
5. Air quality, surface and groundwater quality and quantity will not be degraded or depleted by the proposed use to an extent that would hinder or discourage appropriate development in nearby areas.
6. The proposed use is consistent with the general standards for special permits.

The special permit is granted subject to the following conditions, safeguards, and restrictions upon the proposed uses, as are deemed necessary in the public interest to secure compliance with the provisions of this Ordinance:

1. The development shall be generally consistent with the conceptual special permit plat submitted with the application.
2. The hours of operation shall be limited to 10 A.M. to 6 P.M. Monday through Friday with one Saturday per month appointments.
3. No more than 10 clients shall be seen per day.
4. No more than two (2) employees are allowed on the site.
5. There shall be a minimum of 30 minutes between each appointment.

6. Updated entrance permit and appropriate entrance improvements per VDOT approval are required.
7. Parking area shall have at least 3 spaces with enough room for turn around; staff shall confirm that the parking provided on site meets this requirement.
8. The permit is approved for a period of 3 years.
9. Permit does not convey with property.

The motion carried unanimously.

SPECIAL PERMIT #SPPT04-LE-021, JOHN N. DEOUDS, WILLIAM B. BAYNE, JR. & JOHN D. CLAYBOURNE (OWNERS) / SHEETZ, INC. (CONTRACT OWNER)

Owner/Contract Owner is seeking special permit approval for redevelopment of the existing Sheetz service station onto a larger tract to include an auto service station with a convenience store and fast food restaurant, PIN #6980-29-9580 & #6980-39-0038, located at the intersection of Marsh Road (Rt. 17) and James Madison Hwy. (Rt. 29), Lee District, Bealeton, Virginia.

Mr. Hodge stated that a BZA site visit was made earlier today, and he reviewed the staff report, a copy of which is attached to and made a part of the minutes.

Ms. Deirdre Clark, staff planner, reviewed the staff report in more detail.

Mr. Dick Keller, traffic consultant for the County, presented exhibits contained in the staff report and spoke addressing traffic issues.

Mr. Garrett Moore, VDOT representative, appeared to address questions on road improvements.

Mr. Meadows asked if it was the Board's responsibility to assure an application is consistent with the comprehensive plan.

Ms. Johnson stated that one of the general standards for all special permits is whether the proposed use is in accordance with the applicable zoning district regulations and applicable provisions of the Comprehensive Plan.

Mr. Ben Jones, attorney representing the applicant, spoke representing the application. He introduced Mr. Charlie Robinson and Mr. Ron Misowski as representatives from Sheetz. Mr. Jones stated that Sheetz was an outstanding asset of Fauquier County. He stated that Fauquier realized almost \$90,000 in real estate, personal property, sales tax, and gasoline taxes, that Sheetz had helped to bring public sewer to Opal, and that Sheetz

would help to bring public water to the area. Mr. Jones indicated that he would like to be a part of the discussion of possible conditions.

Mr. Charlie Robinson, Sheetz representative, spoke representing the application. He stated that the Sheetz has been extremely successful at this location, and has already been through several interior renovations. He noted that Sheetz wanted to expand more into the food business. Mr. Robinson submitted pictures of a new Sheetz store, a copy of which are attached to and made a part of the minutes.

Mr. Ron Mislowski, engineer, appeared representing the application. He stated that it is in Sheetz's interest to get people into and out of the site. He stated agreement with doing traffic impact study as part of the site plan. He stated that Sheetz cannot wait for FCWSA to bring water to Opal because they currently they have difficulties on high demand weekends where the current pumps have not been able to keep up with demand. He noted that Sheetz is now drilling wells trying to locate a water supply.

Ms. Mailler asked if there were any speakers for or against this application.

Mr. Lubowsky, Chairman for communications with Citizens for Fauquier County, requested that the Board be particularly aware of the possibility for adding design requirements. He stated endorsement for what Sheetz is doing.

Mr. John Mulligan, Opal Road resident, stated concerns with the impact of Sheetz's expansion on the water table. He stated he has lived in Opal for 6 years.

Mr. Meadows stated that he understands that DEQ regulations require Sheetz to have enough water to run the facility and he asked if it was important for the Board to see that a study be done.

Ms. Johnson stated that one of the standards for all special permits is that the proposed use will not adversely affect the use or development of neighboring properties and will not impair the value of nearby land. She also stated that another standard is that air quality, surface and groundwater quality and quantity will not be degraded or depleted by the proposed use to an extent that would hinder or discourage appropriate development in nearby areas.

Mr. Rick Carr, Director of Community Development, stated the Board may want to consider requesting Barney Durrett of Fauquier County Water and Sanitation Authority attend a meeting and answer questions. Ms. Clark stated that FCWSA was contacted for comments on the application but they had not submitted written comments. FCWSA had indicated to staff that their water studies are ongoing and that a time table for delivering public water is not possible to pinpoint at this time.

Mr. Van Luven stated he would like to defer the application to the next meeting because of concerns with the use, conformance with the Comprehensive Plan, traffic, and water.

Mr. Meadows stated he hoped the applicant would request a deferral. Mr. Jones stated that the applicant hesitates to ask for a deferral due to contract deadlines.

Ms. Bowen stated that the Comprehensive Plan says the site is to be commercial and she therefore felt the proposed use is consistent with the Plan. Ms. Bowen asked staff what type of commercial is proposed in the Comprehensive plan. She noted that the Plan is only a guide and that the Route 608 extension may or may not happen, and requested that additional information be provided on when road improvements planned for the area will happen and what land had been acquired by VDOT thus far. She further stated that an eating establishment is allowed by right in the zoning district. Ms. Bowen stated that there are many issues with the application but noted that the application is for a special permit and not a rezoning. She indicated that many of the issues should be addressed at site plan. Ms. Bowen stated that she too wished to keep the public hearing open and forward questions to the applicant and staff to get answers before the next meeting.

Ms. Mailler stated that if any Board member had questions or conditions to forward them to her. She stated that the staff would get them to the applicant for response in a timely manner, and that she would work with staff to develop some draft conditions for consideration.

Mr. Carr asked the BZA, if they wished for the applicant, County staff, and Virginia Department of Transportation staff to meet prior to the next meeting to try and resolve some of the traffic issues.

Ms. Mailler replied that it would be very helpful.

On a motion made by Mr. Van Luven and seconded by Mr. Meadows, the BZA Board deferred the hearing to the next regularly scheduled meeting.

The motion carried unanimously.

OTHER BUSINESS: Ms. Dotson asked the BZA to review the Media Relations seminar and choose which session they would like to attend and notify her.

Mr. Meadows asked that the staff make the applicant aware of comments made by the referral agencies. Ms. Johnson stated that staff will send a copy of the staff reports, including any comments received by agencies, to the applicants on the same Friday that reports are distributed to the BZA members.

ADJOURMENT: There being no further business before the Board, the meeting adjourned at 4:20pm.

Margaret Mailler, Chairman

Sonja Addison, Secretary

Copies of all files and materials presented to the Board are attached to and become a part of these minutes. A recording of the meeting is on file for one year.